

**Senate File 2038 - Introduced**

SENATE FILE 2038

BY QUIRMBACH

**A BILL FOR**

1 An Act relating to vapor products, providing penalties, and  
2 including effective date provisions.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 453A.1, Code 2014, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 26A. "*Vapor product*" means a noncombustible  
4 product containing nicotine that employs a mechanical heating  
5 element, battery, or circuit, regardless of shape or size, that  
6 can be used to heat a nicotine solution, and includes but is  
7 not limited to a cartridge or other container of such nicotine  
8 solution, an electronic cigarette, an electronic cigar, an  
9 electronic cigarillo, or an electronic pipe. "*Vapor product*"  
10 does not include a product regulated as a drug or device by the  
11 United States food and drug administration under chapter V of  
12 the federal Food, Drug, and Cosmetic Act.

13 Sec. 2. Section 453A.2, subsections 1, 2, 3, and 8, Code  
14 2014, are amended to read as follows:

15 1. A person shall not sell, give, or otherwise supply any  
16 tobacco, tobacco products, vapor products, or cigarettes to any  
17 person under eighteen years of age.

18 2. A person under eighteen years of age shall not smoke,  
19 use, possess, purchase, or attempt to purchase any tobacco,  
20 tobacco products, vapor products, or cigarettes.

21 3. Possession of ~~cigarettes or tobacco~~, tobacco products,  
22 vapor products, or cigarettes by an individual under eighteen  
23 years of age does not constitute a violation under this section  
24 if the individual under eighteen years of age possesses the  
25 ~~cigarettes or tobacco~~, tobacco products, vapor products, or  
26 cigarettes as part of the individual's employment and the  
27 individual is employed by a person who holds a valid permit  
28 under this chapter or who lawfully offers for sale or sells  
29 cigarettes or tobacco products.

30 8. a. A person shall not be guilty of a violation of this  
31 section if conduct that would otherwise constitute a violation  
32 is performed to assess compliance with ~~cigarette and tobacco~~,  
33 tobacco products, vapor products, or cigarette laws if any of  
34 the following applies:

35 (1) The compliance effort is conducted by or under the

1 supervision of law enforcement officers.

2 (2) The compliance effort is conducted with the advance  
3 knowledge of law enforcement officers and reasonable measures  
4 are adopted by those conducting the effort to ensure that use  
5 of ~~cigarettes or tobacco~~, tobacco products, vapor products,  
6 or cigarettes by individuals under eighteen years of age does  
7 not result from participation by any individual under eighteen  
8 years of age in the compliance effort.

9 b. For the purposes of this subsection, "*law enforcement*  
10 *officer*" means a peace officer as defined in section 801.4 and  
11 includes persons designated under subsection 4 to enforce this  
12 section.

13 Sec. 3. Section 453A.4, subsection 1, Code 2014, is amended  
14 to read as follows:

15 1. If a person holding a permit under this chapter or an  
16 employee of such a permittee has a reasonable belief based on  
17 factual evidence that a driver's license as defined in section  
18 321.1, subsection 20A, or nonoperator's identification card  
19 issued pursuant to section 321.190 offered by a person who  
20 wishes to purchase ~~cigarettes or tobacco~~, tobacco products,  
21 vapor products, or cigarettes is altered or falsified or  
22 belongs to another person, the permittee or employee may  
23 retain the driver's license or nonoperator's identification  
24 card. Within twenty-four hours, the card shall be delivered to  
25 the appropriate city or county law enforcement agency of the  
26 jurisdiction in which the permittee's premises are located, and  
27 the permittee shall file a written report of the circumstances  
28 under which the card was retained. The local law enforcement  
29 agency may investigate whether a violation of section 321.216,  
30 321.216A, or 321.216C has occurred. If an investigation is not  
31 initiated or probable cause is not established by the local  
32 law enforcement agency, the driver's license or nonoperator's  
33 identification card shall be delivered to the person to whom it  
34 was issued. The local law enforcement agency may forward the  
35 card with the report to the state department of transportation

1 for investigation, in which case, the state department  
2 of transportation may investigate whether a violation of  
3 section 321.216, 321.216A, or 321.216C has occurred. The  
4 state department of transportation shall return the card to  
5 the person to whom it was issued if an investigation is not  
6 initiated or probable cause is not established.

7 Sec. 4. Section 453A.5, subsection 1, Code 2014, is amended  
8 to read as follows:

9 1. The alcoholic beverages division of the department of  
10 commerce shall develop a tobacco compliance employee training  
11 program not to exceed two hours in length for employees and  
12 prospective employees of retailers, as defined in sections  
13 453A.1 and 453A.42, to inform the employees about state and  
14 federal laws and regulations regarding the sale of ~~eigarettes~~  
15 ~~and tobacco, tobacco products, vapor products, and cigarettes~~  
16 to persons under eighteen years of age and compliance with and  
17 the importance of laws regarding the sale of ~~eigarettes and~~  
18 ~~tobacco, tobacco products, vapor products, and cigarettes~~ to  
19 persons under eighteen years of age.

20 Sec. 5. Section 453A.36, subsection 7, Code 2014, is amended  
21 to read as follows:

22 7. a. It shall be unlawful for a person other than a ~~holder~~  
23 ~~of a~~ retailer as defined in section 453A.1 or 453A.42 who holds  
24 a valid retail permit, as applicable, to sell tobacco, tobacco  
25 products, vapor products, or cigarettes at retail.

26 b. ~~No~~ A state permit holder shall not sell or distribute  
27 cigarettes at wholesale to any person in the state of Iowa  
28 who does not hold a permit authorizing the retail sale  
29 of cigarettes or who does not hold a state permit as a  
30 manufacturer, distributing agent, wholesaler, or distributor.

31 Sec. 6. Section 453A.36A, subsection 1, Code 2014, is  
32 amended to read as follows:

33 1. ~~Beginning January 1, 1999, except~~ Except as provided in  
34 section 453A.36, subsection 6, a retailer shall not sell or  
35 offer for sale ~~eigarettes or tobacco, tobacco products, in a~~

1 ~~quantity of less than a carton,~~ vapor products, or cigarettes  
2 through the use of a self-service display.

3 Sec. 7. Section 453A.39, Code 2014, is amended to read as  
4 follows:

5 **453A.39 Tobacco ~~product,~~ tobacco products, vapor products,**  
6 **and cigarette samples — restrictions — administration.**

7 1. A manufacturer, distributor, wholesaler, retailer, or  
8 distributing agent, or agent thereof, shall not give away  
9 ~~cigarettes or tobacco,~~ tobacco products, vapor products, or  
10 cigarettes at any time in connection with the manufacturer's,  
11 distributor's, wholesaler's, retailer's, or distributing  
12 agent's business or for promotion of the business or product,  
13 except as provided in subsection 2.

14 2. a. All cigarette samples shall be shipped only to a  
15 distributor that has a permit to stamp cigarettes or little  
16 cigars with Iowa tax. All cigarette samples must have a  
17 cigarette stamp. The manufacturer shipping samples under this  
18 section shall send an affidavit to the director stating the  
19 shipment information, including the date shipped, quantity, and  
20 to whom the samples were shipped. The distributor receiving  
21 the shipment shall send an affidavit to the director stating  
22 the shipment information, including the date shipped, quantity,  
23 and from whom the samples were shipped. These affidavits shall  
24 be duly notarized and submitted to the director at the time of  
25 shipment and receipt of the samples. The distributor shall  
26 pay the tax on samples by separate remittance along with the  
27 affidavit.

28 b. A manufacturer, distributor, wholesaler, retailer, or  
29 distributing agent or agent thereof shall not give away any  
30 ~~cigarettes or tobacco,~~ tobacco products, vapor products, or  
31 cigarettes to any person under eighteen years of age, or within  
32 five hundred feet of any playground, school, high school, or  
33 other facility when such facility is being used primarily by  
34 persons under age eighteen for recreational, educational, or  
35 other purposes.

1     *c.* Proof of age shall be required if a reasonable person  
2 could conclude on the basis of outward appearance that a  
3 prospective recipient of a sample may be under eighteen years  
4 of age.

5     Sec. 8. Section 805.8C, subsection 3, Code 2014, is amended  
6 to read as follows:

7     3. ~~*Smoking violations*~~ *Violations related to smoking, tobacco,*  
8 *tobacco products, vapor products, and cigarettes.*

9     *a.* For violations described in section 142D.9, subsection 1,  
10 the scheduled fine is fifty dollars, and is a civil penalty,  
11 and the criminal penalty surcharge under section 911.1 shall  
12 not be added to the penalty, and the court costs pursuant  
13 to section 805.9, subsection 6, shall not be imposed. If  
14 the civil penalty assessed for a violation described in  
15 section 142D.9, subsection 1, is not paid in a timely manner,  
16 a citation shall be issued for the violation in the manner  
17 provided in section 804.1. However, a person under age  
18 eighteen shall not be detained in a secure facility for failure  
19 to pay the civil penalty. The complainant shall not be charged  
20 a filing fee.

21     *b.* For violations of section 453A.2, subsection 1, by an  
22 employee of a retailer, the scheduled fine is as follows:

23         (1) If the violation is a first offense, the scheduled fine  
24 is one hundred dollars.

25         (2) If the violation is a second offense, the scheduled fine  
26 is two hundred fifty dollars.

27         (3) If the violation is a third or subsequent offense, the  
28 scheduled fine is five hundred dollars.

29     *c.* For violations of section 453A.2, subsection 2, the  
30 scheduled fine is as follows and is a civil penalty, and the  
31 criminal penalty surcharge under section 911.1 shall not be  
32 added to the penalty, and the court costs pursuant to section  
33 805.9, subsection 6, shall not be imposed:

34         (1) If the violation is a first offense, the scheduled fine  
35 is fifty dollars.

1 (2) If the violation is a second offense, the scheduled fine  
2 is one hundred dollars.

3 (3) If the violation is a third or subsequent offense, the  
4 scheduled fine is two hundred fifty dollars.

5 Sec. 9. EFFECTIVE UPON ENACTMENT. This Act, being deemed of  
6 immediate importance, takes effect upon enactment.

7 Sec. 10. CODE EDITOR DIRECTIVE. The Code editor shall  
8 modify the title of chapter 453A to read "Cigarette and Tobacco  
9 Taxes and Regulation of Vapor Products".

10 EXPLANATION

11 The inclusion of this explanation does not constitute agreement with  
12 the explanation's substance by the members of the general assembly.

13 This bill relates to the regulation of vapor products. The  
14 bill defines "vapor products" separately from cigarettes and  
15 tobacco products under Code chapter 453A (cigarette and tobacco  
16 taxes).

17 The bill includes vapor products under the prohibitions  
18 relating to persons under legal age. Under the bill, a person  
19 shall not sell, give, or otherwise supply any tobacco, tobacco  
20 products, vapor products, or cigarettes to any person under 18  
21 years of age; and a person under 18 years of age is prohibited  
22 from smoking, using, possessing, purchasing, or attempting to  
23 purchase any tobacco, tobacco products, vapor products, or  
24 cigarettes. However, possession of tobacco, tobacco products,  
25 vapor products, or cigarettes by an individual under 18 years  
26 of age does not constitute a violation if the individual under  
27 18 possesses the tobacco, tobacco products, vapor products,  
28 or cigarettes as part of the individual's employment and the  
29 individual is employed by a person who holds a valid permit or  
30 who lawfully offers for sale or sells cigarettes or tobacco  
31 products. Additionally, a person is not guilty of a violation  
32 if conduct that would otherwise constitute a violation is  
33 performed to assess compliance with tobacco, tobacco products,  
34 vapor products, or cigarette laws under specified conditions.

35 The bill amends provisions relating to the suspected use of

1 a falsified driver's license or nonoperator's identification  
2 card to purchase cigarettes and tobacco products, to also apply  
3 to the purchase of tobacco and vapor products; and amends  
4 provisions relating to the tobacco compliance employee training  
5 program developed by the alcoholic beverages division of the  
6 department of commerce to address, in addition to cigarettes  
7 and tobacco products, tobacco, and vapor products.

8     The bill provides that it is unlawful for a person other  
9 than a retailer of cigarettes or tobacco products who holds a  
10 valid retail permit to sell tobacco, tobacco products, vapor  
11 products, or cigarettes at retail. The bill makes applicable  
12 to tobacco and vapor products, in addition to tobacco products  
13 and cigarettes, the prohibition against a retailer selling  
14 or offering for sale these products through the use of a  
15 self-service display. The bill includes tobacco and vapor  
16 products in the prohibition against giving away samples of  
17 these products to any person under 18 years of age, or within  
18 500 hundred feet of any playground, school, high school, or  
19 other facility when such facility is being used primarily by  
20 persons under age 18 for recreational, educational, or other  
21 purposes.

22     The bill amends the headnote of the scheduled violations  
23 provision relating to smoking to include violations relating  
24 to smoking, tobacco, tobacco products, vapor products, and  
25 cigarettes.

26     The bill directs the Code editor to modify the title of  
27 Code chapter 453A to read "Cigarette and Tobacco Taxes and  
28 Regulation of Vapor Products".

29     The bill takes effect upon enactment.